In the High Court of Punjab and Haryana, Chandigarh.

C.W.P.No.1019 of 2004

Date of Decision:- 17.11.2006

Babu Ram …Petitioner.

Versus

Uttar Haryana Bijli Vitran Nigam Limited & Others.

…Respondents.

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE S.N.AGGARWAL

Present: Mr.Sushil Bhardwaj, Advocate for the Petitioner.

Mr.Amit Mehta, Advocate for the Respondents.

JUDGMENT

M.M.KUMAR, J.

The instant petition is directed against order dated 3.10.2003 (P-1) whereby the petitioner has been compulsorily retired. The petitioner joined on the post of ALM with the respondent department on 6.9.1968. His services were terminated in the year 1970. The petitioner assailed the order of termination before the Appellate Authority and the appeal filed by the petitioner was partially allowed. Accordingly, the order of his termination was

set aside and the petitioner was ordered to be reinstated in service. He requested the authority to regularize the period of his service from 1970 to 1979, but all in vain. The petitioner had filed a Civil Suit No.199 on 18.7.2002 for grant of annual increment as well as A.C.P. along with interest at the rate of 18% per annum. That civil suit was decided on 15.10.2003 in favour of the plaintiff and it was held that the petitioner was entitled to annual increments for the period 2001-2002 and the benefits of Accelerated Career Progression (A.C.P.) along with interest at the rate of 18% per annum from the date it fell due till its realization. On attaining the age of 55 years on 31.10.2002. He was also granted extension. But the respondents retired the petitioner compulsorily after attaining 56 years of age.

The respondent has, however, submitted that the petitioner was appointed as Assistant Lineman on 6.9.1968. His service was terminated on 20.11.1971 w.e.f. 6.10.1970 on account of his prolonged wilful absence from duty and creating indiscipline amounting to misconduct. Thereafter he was given fresh appointment on 3.4.1973 for a period not exceeding six months. Again his services were terminated on 10.4.1974. He was again appointed afresh as Assistant Lineman (ALM) on 11.8.1977. After three months he was charged with absence from duty w.e.f. 2.11.1977. He was consequently discharged from service. It has been asserted that the petitioner is not entitled to benefits of A.C.P. because he earned adverse report of 1994-1995 with the remarks that his integrity is doubtful. As far as the decree in the

suit filed by the petitioner is concerned it has been submitted that R.S.A.No.4456 of 2004 has been filed by the respondent which is pending consideration after admission and the judgment of decree of the Civil Court has been stayed. The respondents have also clarified in para 5(iii) of the written statement that petitioner has not been given extension beyond 55 years. His case in fact was under consideration and decision was taken to compulsorily retire the petitioner.

It is, thus, obvious that the service record of the petitioner is stinking and his integrity has been doubted for the year 1994-1995.

After hearing learned counsel for the parties, and perusing the records, we are of the considered view that the order of compulsory retirement of the petitioner deserves to be upheld. It is well settled that if integrity of an employee is doubted even once during his service career then such an employee may have to be chopped off as a deadwood, which is in larger public interest. In that regard, reliance may be placed to the judgments of Hon'ble the Supreme Court in the cases of **Union of India v. Ajoy Kumar Patnaik, (1995) 6 SCC 442** and **Jugal Chandra Saikia v. State of Assam, (2003) 4 SCC 59**. In para 5 of the judgment in Jugal Chandra Saikia's case (supra) it has been noticed that the review committee had concluded that the delinquent employee had outlived its utility and was of doubtful integrity. In Jugal Chandra Saikia's case (supra), Hon'ble the Supreme has followed and

applied the principles of law as laid down in **Baikuntha Nath Das's case (infra).**

It is also well settled that once the competent authority has applied its mind and has objectively assessed the record of an officer then this Court is not to sit as a Court of appeal on the decision taken by the authority concerned because premature retirement is not a punishment. However, such an order could be interfered with only if there is no material to conclude that an employee has become dead wood or malafide or decision is otherwise unreasonable. These principles have been settled by Hon'ble the Supreme Court in the case of **"Baikuntha Nath Das v. Chief District Medical Officer, Baripada, (1992) 2 SCC 299**, the whole earlier case law was reviewed by their Lordships and the following five propositions were extracted, which are as under:-

> "34. The following principles emerge from the above discussion:
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> (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
>
> (ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.
>
> (iii) Principles of natural justice have no place in the context of an order of compulsory retirement.

This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary – in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter – of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse

remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference."

When the principles laid down by Hon'ble the Supreme Court are applied to the facts of the present case no doubt is left that the impugned order dated 3.10.2003 (Annexure P1) retiring the petitioner compulsorily does not suffer from any illegality. The service record of the petitioner as depicted in the written statement would unequivocally show that services of the petitioner were terminated three times in 1970, 1974 and in 1977. After his last reinstatement he earned adverse entry for the year 1994-1995 and his integrity was also found to be doubtful. Therefore, it cannot be concluded that the order has been passed on irrelevant consideration warranting interference of this Court. There is objective assessments made by the respondent and, therefore, no exception could be taken to the impugned order. On principles and precedents the writ is liable to be dismissed and the impugned order deserves to be upheld.

For the reasons aforementioned, this petition fails and the same is dismissed.

(M.M.KUMAR)
Judge

November 17, 2006 **(S.N.AGGARWAL)**
dkb **Judge**